IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Second Appeal No.1272 of 2005
with
Civil Application No.1776 of 2005

1. Shri Machhindra Parvati
Atole and anr. ..Appellants

Vs.

1. Smt.Gangubai Bhimaji Gawde
and others ..Respondents

Ms.Nayana Thatte i/b Mr.Ambnar Joshi for appellants.
Mr.Bharat Mehta, A.G.P. for respondent no.3
Mr.A.P.Kulkarni for respondent nos. 4 to 7.

CORAM: S.C.DHARMADHIKARI J.
11th July, 2007

P.C.

1. This appeal at the instance of the original defendants is directed against the judgment and decree of the lower Appellate Court in Civil Appeal No.52 of 2003 by which the suit which was preferred by the appellant before the lower Appellate Court is decreed and it is held that the sale deed dated 9th June, 1997 executed by defendant nos.2 and 3 in favour of defendant no. 5 is illegal and not binding on the original plaintiff. Consequently these defendants have been restrained by perpetual injunction and order of the lower Appellate Court from disturbing the peaceful possession of the plaintiffs in the suit property.

2. Admittedly the appellants are claiming title to the

property on the basis of the sale deed dated 9th June, 1997 whereas the plaintiffs are relying upon the earlier sale deed dated 30th December, 1991. The original plaintiffs were duty bound to prove that this sale deed included Vihirpad area and right to take water from the well situated therein which is claimed by the appellants before me. It is this portion and right which has been sold by defendant nos. 2 and 3 to defendant no.5 under the subsequent sale deed of 1997. The documentary evidence has been relied upon so also oral depositions. The learned Judge after perusing both the sale deeds and taking into account the property sold thereunder has relied upon the settled position of a former sale deed prevailing over the later. The learned Judge has held, after relying upon the documents which have been duly exhibited upon their contents were proved, that no land was left back from Gat No.143/1. Gat No.143/1 consists of 20 R and 1.6 H which belongs to respondent nos.1 and 3 respectively. These lands have been sold to the original plaintiff under 1991 sale deed. There is no entry in the record of right as to which 6 R of land is vihirpad. In para 9 of the impugned judgment this oral and documentary evidence has been referred to and relied upon. I see no warrant to disturb the conclusion reached in para 11 of the impugned judgment as it is based upon the oral and documentary evidence placed before the Court below. It being consistent with the same and this Court having

limited powers under sec.100 of the Code of Civil Procedure it is not a fit case for interference. No substantial question of law is raised and accordingly second appeal stands dismissed.

3. In view of dismissal of the second appeal civil application does not survive and hence it is rejected.

(S.C.DHARMADHIKARI J.)